

predetermined number of miles. However, designs with soft tops or expiration features are subject to proration provisions under this section that do not apply to fixed VSLs that do not expire.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) Default speed limit means the speed limit that normally applies for the vehicle, except as follows:

(i) The default speed limit for adjustable VSLs must represent the speed limit that applies when the VSL is adjusted to its highest setting under paragraph (c) of this section.

(ii) For VSLs with soft tops, the default speed does not include speeds possible only during soft-top operation.

(iii) For expiring VSLs, the default does not include speeds that are possible only after expiration.

(2) Soft-top speed limit means the highest speed limit that applies during soft-top operation.

(3) Maximum soft-top duration means the maximum amount of time that a vehicle could operate above the default speed limit.

(4) Certified VSL means a VSL configuration that applies when a vehicle is new and until it expires.

(5) Expiration point means the mileage at which a vehicle's certified VSL expires (or the point at which tamper protections expire).

(6) Effective speed limit has the meaning given in paragraph (d) of this section.

(c) *Adjustments.* You may design your VSL to be adjustable; however, this may affect the value you use in the GEM.

(1) Except as specified in paragraph (c)(2) of this section, any adjustments that can be made to the engine, vehicle, or their controls that change the VSL's actual speed limit are considered to be adjustable operating parameters. Compliance is based on the vehicle being adjusted to the highest speed limit within this range.

(2) The following adjustments are not adjustable parameters:

(i) Adjustments made only to account for changing tire size or final drive ratio.

(ii) Adjustments protected by encrypted controls or passwords.

(iii) Adjustments possible only after the VSL's expiration point.

(d) *Effective speed limit.* (1) For VSLs without soft tops or expiration points that expire before 1,259,000 miles, the effective speed limit is the highest speed limit that results by adjusting the VSL or other vehicle parameters consistent with the provisions of paragraph (c) of this section.

(2) For VSLs with soft tops and/or expiration points, the effective speed limit is calculated as specified in this paragraph (d)(2), which is based on 10 hours of operation per day (394 miles per day for day cabs and 551 miles per day for sleeper cabs). Note that this calculation assumes that a fraction of this operation is speed limited (3.9 hours and 252 miles for day cabs, and 7.3 hours and 474 miles for sleeper cabs). Use the following equation to calculate the effective speed limit, rounded to the nearest 0.1 mph:

$$\text{Effective speed} = \text{ExF} * [\text{STF} * \text{STSL} + (1 - \text{STF}) * \text{DSL}] + (1 - \text{ExF}) * 65 \text{ mph}$$

Where:

ExF = expiration point miles/1,259,000 miles

STF = maximum number of allowable soft top operation hours per day/3.9 hours for day cabs (or maximum miles per day/252)

STF = maximum number of allowable soft top operation hours per day/7.3 hours for sleeper cabs (or maximum miles per day/474)

STSL = the soft top speed limit

DSL = the default speed limit

§ 1037.645 In-use compliance with family emission limits (FELs).

You may ask us to apply a higher in-use FEL for certain in-use vehicles, subject to the provisions of this section. Note that §1037.225 contains provisions related to changing FELs during a model year.

(a) *Purpose.* This section is intended to address circumstances in which it is in the public interest to apply a higher in-use FEL based on forfeiting an appropriate number of emission credits.

(b) *FELs.* We may apply higher in-use FELs to your vehicles as follows:

(1) Where your vehicle family includes more than one sub-family with different FELs, we may apply a higher FEL within the family than was applied to the vehicle's configuration in your final ABT report. For example, if your vehicle family included three sub-

families with FELs of 200 g/ton-mile, 210 g/ton-mile, and 220 g/ton-mile, we may apply a 220 g/ton-mile in-use FEL to vehicles that were originally designated as part of the 200 g/ton-mile or 210 g/ton-mile sub-families.

(2) Without regard to the number of sub-families in your certified vehicle family, we may specify new sub-families with higher FELs than were included in your final ABT report. We may apply these higher FELs as in-use FELs for your vehicles. For example, if your vehicle family included three sub-families with FELs of 200 g/ton-mile, 210 g/ton-mile, and 220 g/ton-mile, we may specify a new 230 g/ton-mile sub-family.

(3) In specifying sub-families and in-use FELs, we would intend to accurately reflect the actual in-use performance of your vehicles, consistent with the specified testing and modeling provisions of this part.

(c) *Equivalent families.* We may apply the higher FELs to other families in other model years if they used equivalent emission controls.

(d) *Credit forfeiture.* Where we specify higher in-use FELs under this section, you must forfeit CO₂ emission credits based on the difference between the in-use FEL and the otherwise applicable FEL. Calculate the amount of credits to be forfeited using the applicable equation in §1037.705, by substituting the otherwise applicable FEL for the standard and the in-use FEL for the otherwise applicable FEL.

(e) *Requests.* Submit your request to the Designated Compliance Officer. Include the following in your request:

(1) The vehicle family name, model year, and name/description of the configuration(s) affected.

(2) A list of other vehicle families/configurations/model years that may be affected.

(3) The otherwise applicable FEL for each configuration along with your recommendations for higher in-use FELs.

(4) Your source of credits for forfeiture.

(f) *Relation to recall.* You may not request higher in-use FELs for any vehicle families for which we have made a determination of nonconformance and ordered a recall. You may, however,

make such requests for vehicle families for which you are performing a voluntary emission recall.

(g) *Approval.* We may approve your request if we determine that you meet the requirements of this section and such approval is in the public interest. We may include appropriate conditions with our approval or we may approve your request with modifications.

§ 1037.650 Tire manufacturers.

This section describes how the requirements of this part apply with respect to tire manufacturers that choose to provide test data or emission warranties for purposes of this part.

(a) *Testing.* You are responsible as follows for test tires and emission test results that you provide to vehicle manufacturers for the purpose of the manufacturer submitting them to EPA for certification under this part:

(1) Such test results are deemed under §1037.825 to be submissions to EPA. This means that you may be subject to criminal penalties under 18 U.S.C. 1001 if you knowingly submit false test results to the manufacturer.

(2) You may not cause a vehicle manufacturer to violate the regulations by rendering inaccurate emission test results you provide (or emission test results from testing of test tires you provide) to the vehicle manufacturer.

(3) Your provision of test tires and emission test results to vehicle manufacturers for the purpose of certifying under this part is deemed to be an agreement to provide tires to EPA for confirmatory testing under §1037.201.

(b) *Warranty.* You may contractually agree to process emission warranty claims on behalf of the manufacturer certifying the vehicle with respect to tires you produce.

(1) Your fulfillment of the warranty requirements of this part is deemed to fulfill the vehicle manufacturer's warranty obligations under this part with respect to tires you warrant.

(2) You may not cause a vehicle manufacturer to violate the regulations by failing to fulfill the emission warranty requirements that you contractually agreed to fulfill.